



CONNIE BRADSHAW

179 IBLA 1

Decided March 19, 2010



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

CONNIE BRADSHAW

IBLA 2010-64

Decided March 19, 2010

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring unpatented mining claims forfeited by operation of law for failure to pay the \$100 per claim maintenance fee on or before September 1, 2000, for the 2001 assessment year. UMC 260464, *et al.*

Affirmed; motion to intervene granted; petition for stay denied as moot.

1. State Laws

The Utah Uniform Probate Code provides that title to devised property generally vests in a devisee upon the death of the testator, subject to, among other things, renunciation and disclaimer by the devisee. The Code also requires that, to be effective, a written disclaimer must be filed with the proper court within a prescribed time frame. In the absence of evidence of compliance with these requirements, the Board will find that a devisee has accepted title to devised property, effective upon the death of the testator.

2. Mining Claims: Claim Maintenance Fees: Small Miner Exemption

The owner of interests in more than 10 mining claims does not qualify for the small miner exemption from annual maintenance fees. The failure of such owner to pay annual maintenance fees will result in forfeiture of the mining claims for which the maintenance fees were required.

APPEARANCES: Connie Bradshaw, *pro se* (Appellant), Milford, Utah; A. John Davis, Esq., Oliver W. Gushee, Jr., Esq., Salt Lake City, Utah, for Grand Central Silver Mines, Inc. (Intervenor); John Steiger, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Connie Bradshaw has appealed from and petitioned for a stay of a December 2, 2009, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the White Elephant #1 - 10 unpatented mining claims (UMC 260464 - UMC 260473) forfeited for failure to pay the \$100 per claim maintenance fee on or before September 1, 2000, for the 2001 assessment year, because she did not qualify to file a Maintenance Fee Payment Waiver Certification (Waiver Certification).<sup>1</sup> Grand Central Silver Mines, Inc. (GCSM) has moved to intervene, asserting that it holds mining claims that conflict with appellant's claims. We grant GCSM's Motion to Intervene, and affirm BLM's decision.

The holder of an unpatented mining claim, mill site, or tunnel site, was required pay a maintenance fee for each claim or site on or before September 1 of each year for the years 1999 through 2003.<sup>2</sup> 30 U.S.C. § 28f(a) (2000). Payment of the claim maintenance fee is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2006), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2006), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. 30 U.S.C. § 28f(a) and (b) (2006); *see* 43 C.F.R. § 3834.11(a).

The failure to timely submit the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (2006); *see* 43 C.F.R. §§ 3830.91(a)(3), 3835.92(a). Congress, however, has provided the Secretary with discretion to waive the fee for a claimant who has certified in writing that on the date the payment was due, the claimant and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands and has performed assessment work required under the Mining law of 1872 with respect to the mining claims, for the

<sup>1</sup> BLM's decision states that the claims are forfeited for failure to pay the maintenance fees for assessment years 2001 to 2010. However, the claims were forfeited as of Sept. 1, 2000, so there is no need to discuss Bradshaw's failure to pay maintenance fees thereafter.

<sup>2</sup> The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the September 1st maintenance fee requirement permanent by removing the date range previously imposed by Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (years 2004 through 2008). The basic requirements involving maintenance fees and the waiver of those fees have not changed since the 2000 assessment year, although the maintenance fee amounts have changed.

preceding assessment year ending at noon on September 1 of the calendar year in which payment of the claim maintenance fee is due. 30 U.S.C. § 28f(d)(1) (2006); *see Audrey Bradbury*, 160 IBLA 269, 273-74 (2003). BLM implemented this statute with a regulation that requires a claimant to file “BLM’s waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver.” 43 C.F.R. § 3835.10(a).

### *FACTS*

In this case, appellant has owned the subject 10 mining claims since she acquired them in August 1998. Beginning with the 1999 assessment year, appellant timely filed annual Waiver Certifications and corresponding affidavits of labor.<sup>3</sup> However, upon the death of her mother Drucilla Bradshaw on July 21, 2000, appellant together with her nine siblings became devisees under their mother’s will.<sup>4</sup> Under the provisions of the will, each sibling was to receive a undivided one-tenth interest in the entire estate, and the residue of the estate was to be divided in equal shares among them. The estate included 18 unpatented mining claims, owned by Drucilla Bradshaw either solely or as co-owner.<sup>5</sup> BLM became aware of these facts as the result of a telephone call on October 9, 2009, from counsel representing GCSM, which was followed up by a letter dated October 19, 2009, from GCSM’s counsel transmitting copies of Drucilla Bradshaw’s will, Affidavit of Notice to Heirs, Informal Probate of Will, and Letters Testamentary.

Relying upon the documents provided by GCSM, BLM issued its December 2, 2009, decision. BLM reasoned that because appellant had owned 10 mining claims prior to her mother’s death, and that upon her mother’s death appellant acquired interests in 18 additional claims, therefore appellant owned interests in 28 mining claims as of July 21, 2000,<sup>6</sup> and did not qualify to file a Waiver Certification for the

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<sup>3</sup> There is no evidence in the record that appellant has ever paid maintenance fees for the subject 10 mining claims.

<sup>4</sup> The will also “nominate[d] and appoint[ed]” appellant as personal representative and executor of Drucilla Bradshaw’s estate.

<sup>5</sup> Those claims, which are not directly at issue here, included the White Elephant #71 and #72 (UMC 354830 - 354831), Wild Indian #100 - #104 (UMC 260500 - 260504), Monolith #101 (UMC 260506), Ranch Canyon #100, #101, #103 (UMC 260511, 260512, 260514), Oaks #100 (UMC 260515), Dru’s Cedar #100 - #104 (UMC 260494 - 260498), and Black & White (UMC 335172).

<sup>6</sup> BLM’s decision states that “the transfer [of Drucilla Bradshaw’s claims to the devisees] was in effect on July 21, 2000 (per Fifth Judicial District Court of Beaver (continued...))

2001 assessment year and thereafter. Because appellant failed to pay maintenance fees for the 10 claims at issue in this appeal on or before September 1, 2000, for the 2001 assessment year and thereafter, BLM declared those claims forfeited.

Appellant's statement of reasons does not directly address the issue of her acquisition, by inheritance, of the undivided interests in the additional 18 claims. She simply asserts that she only owns the 10 claims she acquired in 1998, and that she has always made her filings on time and performed the annual assessment work. However, there is evidence in the record that illuminates the circumstances surrounding the inheritance and appellant's belief that she only owns those 10 claims.

By letter received by BLM on January 12, 2010, Neil Bradshaw (appellant's brother and a devisee under Drucilla Bradshaw's will) submitted to BLM a notice of transfer of interest of the 18 mining claims that had been part of Drucilla Bradshaw's estate. He listed the 18 claims and identified the owners of undivided interests in those claims. Appellant was not listed as an owner. Neil Bradshaw also included a statement dated July 21, 2000, describing a family meeting that occurred upon the death of Drucilla Bradshaw. During that meeting, there was discussion that a "possible conflict could arise" because several devisees already owned mining claims, and that two of the family members that did not already own claims were entitled to their share. As a result, "[i]t was decided by the family that Connie Bradshaw as personal representative would transfer interest of our mother's said claims to Richard Bradshaw and Janet Douglas. By deed or other wise." The statement was signed by six family members (all devisees under the will) and witnessed by two other individuals. The witness signatures are dated July 21, 2000. Also included was a quit claim deed executed by appellant in her capacity as personal representative transferring title to the devised claims to Richard Bradshaw and Janet Douglas. The deed was dated July 21, 2000, and was witnessed by the same individuals as witnessed the statement regarding the family meeting.<sup>7</sup>

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<sup>6</sup> (...continued)

County probate document). That statement is misleading. The Informal Probate of Will issued by the Court merely confirms that Drucilla Bradshaw died on July 21, 2000. The effective date of the transfer of title of the mining claims under the will to the devisees, including appellant, was asserted by counsel for GCSM to be July 21, 2000, both in the October 19, 2009, letter to BLM and in GCSM's Opposition to Petition for Stay.

<sup>7</sup> The effectiveness of the quit claim deed is questionable. Although appellant signed the deed as personal representative, and a personal representative "has the same power over the title to property of the estate that an absolute owner would have, in (continued...)

## ANALYSIS

Counsel for BLM and GCSM both assert that appellant did not qualify for a waiver of the maintenance fees for her claims as of July 21, 2000, because she held more than the requisite 10 mining claims before maintenance fees were due for the 2001 assessment year. BLM Response to Stay Petition and Answer (BLM Answer) at 8 - 9, GCSM Opposition to Petition for Stay (GCSM Opposition) at 5. BLM further states that “[U]nder Utah law, a devise of real property becomes effective upon the devisor’s death,” citing to the Utah Uniform Probate Code. BLM Answer at 8.

[1] BLM and GCSM are correct that title to devised property generally vests in devisees upon the death of the testator,<sup>8</sup> but they fail to provide the complete picture. The Utah Uniform Probate Code states that “[u]pon the death of a person his real and personal property devolves to persons to whom it is devised by his last will *or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate.*” Utah Code Ann. § 75-3-101 (2009). So, with respect to a particular devisee, title to devised property would vest upon the death of the testator, unless the devisee renounces or disclaims the devise.

In this case, the signed statement documenting the meeting of family members, the members’ agreement that certain of them should not receive interests in the 18 devised mining claims, the quit claim deed executed by appellant as personal representative, and appellant’s assertion that she has never owned more than her original 10 claims, all could be construed as evidence of appellant’s disclaimer of any interest in the 18 devised claims. But, we need not decide that.

The Utah Uniform Probate Code includes an explicit disclaimer provision.

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<sup>7</sup> (...continued)

trust, however, for the benefit of the creditors and others interested in the estate,” Utah Code Ann. § 75-3-710 (2009), a personal representative does not acquire its powers until “appointed by order of the court or registrar, [and] qualif[ies] [and is] issued letters.” Utah Code Ann. § 75-3-103 (2009). Appellant was not appointed by the registrar until Nov. 8, 2000, after the maintenance fees for the claims or Waiver Certification were due, and long after the deed was executed. *See* Informal Probate of Will. We do not address whether the deed was, or could have been, ratified after appellant was appointed personal representative or would be subject to the doctrine of “after acquired title.”

<sup>8</sup> However, we believe that such an application of the statute usually should be directed more toward “the prompt settlement of estates,” rather than settling disputes over at what precise moment title vested. *See* Utah Code Ann. § 75-3-101 (2009).

“A person . . . to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.” Utah Code Ann. § 75-2-801(1) (2009). The Code continues, “[t]he disclaimer shall be filed . . . not later than nine months after the death of the deceased owner . . . [and] shall be filed in the district court of the county in which proceedings for the administration of the estate of the deceased owner . . . have been commenced.” Utah Code Ann. § 75-2-801(2)(a) (2009). The record contains no indication that a written disclaimer was filed with the appropriate district court.<sup>9</sup> As a result, we find that there was no effective disclaimer by appellant of her interest in the 18 devised claims.

[2] As of July 21, 2000, appellant held interests in more than 10 mining claims and did not qualify for a waiver of the maintenance fees, and she failed to pay the required maintenance fees for the claims at issue on or before September 1, 2000.<sup>10</sup>

The statutory forfeiture provision is self-operative. It explicitly states that failure to timely pay the required maintenance fee automatically results in forfeiture of the mining claim by operation of law. 30 U.S.C. § 28i (2006); *see* 43 C.F.R. §§ 3830.91(a)(4), 3835.92(a). When a claimant fails to timely make a payment, forfeiture results from the statutory directive. *Howard J. Hunt*, 147 IBLA 381, 384 (1999). BLM and this Board are without authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences. *Jon Roalf*, 169 IBLA 58, 62 (2006); *Carl A. Parker, Sr.*, 165 IBLA 300, 303-304 (2005), and cases cited. In the absence of a timely-filed maintenance fee payment on or before September 1, 2000, and without qualification to file a Waiver Certification, BLM properly declared the mining claims forfeited by operation of law. 43 C.F.R. § 3835.92(a); *see Joe Bob Hall*, 135 IBLA 284, 286 (1996); *Alamo Ranch Co.*, 135 IBLA 61, 76 (1996).

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<sup>9</sup> If, in fact, appellant has evidence of her compliance with Utah Code Ann. § 75-2-801(2)(a) (2009), she could seek reconsideration of our decision in accordance with 43 C.F.R. § 4.413.

<sup>10</sup> Because appellant executed the quit claim deed in her capacity as personal representative rather than on her own behalf, we need not address the unresolved issue of the Waiver Certification eligibility of an owner of 10 mining claims that, during an assessment year, acquires additional claims but then transfers title to those additional claims to another party before the Waiver Certification is due for the next assessment year.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, GCSM's Motion to Intervene is granted, appellant's Petition for Stay is denied as moot, and the decision appealed from is affirmed.

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/s/  
H. Barry Holt  
Chief Administrative Judge

I concur:

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/s/  
Bruce R. Harris  
Deputy Chief Administrative Judge